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19
20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 JENNY LISETTE FLORES; *et al.*,

23 Plaintiffs,

24 v.

25 WILLIAM P. BARR, Attorney General
26 of the United States; *et al.*,

Defendants.

Case No. CV 85-4544-DMG

JOINT STATUS REPORT

1 On June 26, 2020, the Court ordered the parties to continue to meet and confer
2 regarding “the adoption and implementation of proper written advisals and other
3 protocols to inform detained guardians/parents about minors’ rights under the FSA
4 and obtain information regarding, and procedures for placement with, available and
5 suitable sponsors, as well as discuss conditions at the Cowlitz and NORCOR
6 detention facilities[,]” and to provide a joint status report regarding these efforts to
7 meet and confer no later than July 8, 2020. Order, ECF No. 833, ¶ 6. In accordance
8 with the Court’s orders, the parties provide the below updates, which supplement the
9 information provided in the parties’ June 15, 2020 joint status report, ECF No. 820.

- 10
11 (1) The adoption and implementation of proper written advisals and other
12 protocols to inform detained guardians/parents about minors’ rights under the
13 FSA and obtain information regarding, and procedures for placement with,
14 available and suitable sponsors

15 On June 26, 2020, Defendants provided five proposed documents to Plaintiffs
16 that expanded upon and incorporated the materials that had previously been
17 exchanged by the parties. Those draft documents included: (1) protocols; (2) a notice
18 of rights; (3) a release agreement; (4) a parole worksheet; and (5) a questionnaire for
19 parents. On July 2, 2020, Plaintiffs returned those documents with proposed edits
20 and comments. The parties met and conferred by phone regarding Plaintiffs’
21 proposed edits on July 2, 2020. On July 7, 2020, the parties again met and conferred
22 by telephone regarding some questions and issues Defendants wished to address
23 concerning Plaintiffs’ documents. Defendants intend to provide responsive drafts
24 incorporating these discussions to Plaintiffs on July 8, 2020. Once Plaintiffs receive
25 those drafts, Plaintiffs will notify Defendants whether they will respond in writing,
26 or whether they believe that the parties should meet and confer telephonically on or
before July 10, 2020.

1 (2) discuss conditions at the Cowlitz and NORCOR detention facilities

2 During the July 2, 2020, call the parties discussed juvenile detention at
3 Cowlitz, but focused primarily on the issue of A.F.P.P.'s custody.

4 **Defendants' Position:** It is Defendants' position that there is no pending
5 motion regarding conditions at Cowlitz or NORCOR, *see* Order, ECF No. 784, at 4,
6 and Defendants defer to Plaintiffs' counsel to raise any such issues about which they
7 seek to explore resolution in advance of bringing any such issues to the Court. In
8 light of the fact that there is nothing pending on this issue, and Plaintiffs are not
9 timely pursuing resolution of any such issues, Defendants object to the Court's
10 prohibition on the transfer of minors in ICE juvenile detention to adult facilities
11 when they age out of juvenile detention, and intend to bring a motion asking the
12 Court to lift this prohibition in the near future.

13 **Plaintiffs' Position:** Plaintiffs will oppose any motion Defendants may bring
14 to vacate the Court's temporary prohibition on the transfer of the remaining two
15 minors in ICE juvenile detention (A.A.A. and K.J.A.B.) to adult facilities when they
16 age out of juvenile detention.

17 On Monday this week, July 5, 2020, having waiting for almost two weeks
18 without moving to modify this Court's June 26, 2020, Order re Updated Juvenile
19 Coordinator Reports ("Order") [Doc # 833], on the eve of Class Member A.F.P.P.'s
20 18th birthday, applied ex parte for an Order "lifting the restrictions in Paragraph 4.e
21 of the Court's June 26, 2020 order" prohibiting the transfer of A.F.P.P., A.A.A. and
22 K.J.A.B. to an adult detention facility when they aged out of juvenile detention.
23 A.F.P.P. was aging out on July 7, 2020. Defendants' Ex Parte Application to Lift
24 Restrictions in Para. 4.E of the June 26, 2020 Order ("Ex Parte Application"). [Doc.
25 # 841].

26 A.F.P.P. Class Counsel worked closely with Class Member A.F.P.P.'s counsel
of record over the past two weeks to pursue remedies to review ICE's determination

1 that he was not eligible for release under Paragraph 14 of the FSA to his resident
2 mother because he was a “danger.”¹

3 ICE had seemingly rarely assessed A.F.P.P.’s alleged dangerousness, and
4 only a deportation officer rather than a mental health professional had decided he
5 was dangerous. However, prior to an IJ bond hearing A.F.P.P.’s counsel requested
6 and scheduled for July 9, 2020, on July 6, 2020, A.F.P.P. submitted a request for
7 reconsideration to ICE while Class Counsel worked on an opposition to Defendant’s
8 Ex Parte Application. By the early evening, A.F.P.P.’s counsel and Class Counsel
9 were informed that ICE had stood down. A.F.P.P. would be released that evening.
10 After spending about nine months in detention, someone at ICE it appears had finally
11 complied with the release provisions of the FSA.

12 The evidence submitted by ICE also showed the agency’s total failure to
13 routinely assess A.F.P.P.’s current dangerousness. Prior to being arrested by ICE in
14 September 2019, A.F.P.P. had never been arrested, charged with any crimes, or
15 engaged in any acts of violence against anyone.

16 Nevertheless, to the best of Class Counsel’s knowledge, Class Members
17 A.A.A. and K.J.A.B. remain in custody and Defendants state they plan to file a
18 motion or application to permit these minors to be transferred to ICE detention
19 facilities.

20 ICE wants to move these class members to adult detention facilities at a time
21 when “medical professionals, correctional health experts, elected leaders, and
22 advocates have urged federal immigration officials to substantially *reduce* the
23

24 ¹ These remedies include a bond hearing before an Immigration Judge (IJ), appeals
25 which either party may take to the Board of Immigration Appeals (BIA) of the IJ’s
26 decision, and federal court review allowed by ¶ 24.B of the FSA of ICE’s refusal to
release under ¶ 14 of the FSA.

number of people in detention facilities,”² and due to ICE’s failure to fully heed these calls, “the total number of individuals who have tested positive in detention continues to rise on a steep trajectory,” and not a single state comes close to having as high of an overall positive test rate as that of ICE detention centers. *Id.* To prevent a humanitarian disaster, “even the officials who run these [ICE] facilities expressed concern.”³

The health situation at the Northwest ICE Processing Center where the remaining two minors would likely be transferred, is described as a “tinderbox” where COVID will spread rapidly to detainees. *Id.* The Center is located in Pierce County, Washington, where on July 3, 2020, the county saw the greatest spike in COVID cases since April.⁴ While many of the short-term consequences of this disease are coming to light, the long-term consequences for lung and heart damage, and even neurocognitive issues, are just beginning to fully reveal themselves.⁵

To the extent ICE is detaining these minors pursuant to FSA Paragraph 21, it states in relevant part:

2 Center for American Progress, *Data on the Coronavirus Outbreak in Immigration Detention Offer More Questions than Answers*, June 16, 2020, available at: [HTTPS://WWW.AMERICANPROGRESS.ORG/ISSUES/IMMIGRATION/NEWS/2020/06/16/486338/DATA-CORONAVIRUS-OUTBREAK-IMMIGRATION-DETENTION-OFFER-QUESTIONS-ANSWERS/](https://www.americanprogress.org/issues/immigration/news/2020/06/16/486338/data-coronavirus-outbreak-immigration-detention-offer-questions-answers/)

³ NPR ‘*You Can Either Be A Survivor or Die*’: COVID-19 Cases Surge in ICE Detention, July 1, 2020, available at: <https://www.npr.org/2020/07/01/871625210/you-can-either-be-a-survivor-or-die-covid-19-cases-surge-in-ice-detention>

⁴ Pierce County sees highest daily count in COVID-19 cases since April (July 3, 2020), available at: <https://www.thenewstribune.com/news/coronavirus/article243985762.html>

⁵ Advisory Board, *What we know (so far) about the long-term health effects of COVID-19*, June 2, 2020, available at: <https://www.advisory.com/daily-briefing/2020/06/02/covid-health-effects>

1 A minor may be held in or transferred to a suitable State or county
2 juvenile detention facility or a secure [ICE] detention facility, or [ICE]-
3 contracted facility, having separate accommodations for minors
4 whenever the [ICE] District Director ... determines that the minor: ... B.
5 has committed, or has made credible threats to commit, a violent or
6 malicious act (whether directed at himself or others) while in [ICE]
7 legal custody ...

8 *Id.*

9 At least in A.F.P.P.'s case, and we assume also in the cases of A.A.A.
10 and K.J.A.B., it appears only a Deportation Officer determined non-eligibility
11 for release under Paragraph 14, not a District Director as required by the FSA.⁶

12 In the almost ten months of A.F.P.P.'s incarceration, as best Plaintiffs
13 know, ICE made *no* efforts to have a mental health professional assess his
14 current level of dangerousness. Nor did ICE communicate with A.F.P.P.'s
15 mother about his history, current behavior, or her willingness to care for him if
16 he was released. Ratcliffe Decl. at 16-18. [Doc. # 824-1].

17 Defendants state above that "Defendants defer to Plaintiffs' counsel to
18 raise any such issues about which they seek to explore resolution in advance of
19 bringing any such issues to the Court ..."

20 Plaintiffs have raised and are raising the issues discussed above. In
21 summary:

22 1. What should ICE be doing to reasonably accurately assess whether
23 detained class members are or are not eligible for release under the FSA
24 Paragraph 14 because they are a flight risk or a danger as those terms are used

25 ⁶ We know nothing about the qualifications the Deportation Officer possesses, if
26 any, to assess a class members' current threat of dangerousness, or whether the
Deportation Officer is even aware of the FSA's requirements relating to escape
risks.

1 in the FSA?

2 2. What protocols should ICE follow to make and record these
3 determinations, and to effect the release of minors who are not flight risks or a
4 danger?

5 3. What advisals should these detained minors receive?

6 Pursuant to this Court's Minutes in Chambers Order re Defendants' Ex
7 Parte Application, the parties will meet and confer to resolve any disputes
8 informally or through the procedure set forth in the Order Appointing Special
9 Master [Doc. # 494]. The goal is to arrive at an agreement or Order approving
10 a protocol that will be followed to ensure FSA compliance at juvenile detention
11 centers.

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1 DATED: July 8, 2020

/s/Peter Schey (with permission)
Class Counsel for Plaintiffs
CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Peter A. Schey
Carlos Holguín

6 DATED: July 8, 2020

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26

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2020, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian
SARAH B. FABIAN
U.S. Department of Justice
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